



DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 130508459-3459-01]

Possible Models for the Administration and Support of Discipline-Specific Guidance Groups for
Forensic Science

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Inquiry.

SUMMARY: The National Institute of Standards and Technology (NIST) invites interested parties to provide their perspectives on the appropriate model for NIST administration and support of discipline-specific Guidance Groups (“Guidance Groups”) to be established pursuant to the Memorandum of Understanding (MOU) between the Department of Justice (DOJ) and the National Institute of Standards and Technology. NIST seeks to identify and understand approaches for the structure of effective and sustainable Guidance Groups. This Notice does not solicit comments or advice on the policies that should be addressed by the Guidance Groups. Responses to this Notice will serve only as input for NIST’s consideration of a model to establish and administer the Guidance Groups.

DATES: Comments must be received by [PLEASE INSERT DATE 45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER], 11:59 PM Eastern Time.

ADDRESSES: Written comments may be submitted by mail to the National Institute of Standards and Technology, c/o Susan Ballou, 100 Bureau Drive, Mailstop 8102 Gaithersburg, MD 20899. Electronic comments may be sent to susan.ballou@nist.gov. Electronic submissions may be in any of the following formats: HTML, ASCII, Word, rtf, or PDF. All email messages and comments received are a part of the public record and will be made available to the public generally without change on the NIST Law Enforcement Standards Office web site; www.nist.gov/oles/forensics/. For this reason, comments should not include confidential, proprietary, or business sensitive information.

FOR FURTHER INFORMATION CONTACT: For questions about this Notice contact:

Susan Ballou, Office of Special Programs, National Institute of Standards and Technology, 100 Bureau Drive, Mailstop 8102, Gaithersburg, MD 20899, telephone (301) 975-8750; e-mail susan.ballou@nist.gov. Please direct media inquiries to the NIST's Office of Public Affairs, Media Liaison, Ms. Jennifer Huergo, utilizing the email address: Jennifer.huergo@nist.gov.

SUPPLEMENTARY INFORMATION

Background: Forensic science, the application of science within a court of law, is an essential tool in investigations and the administration of justice. Techniques used by forensic scientists often serve as the keystone for investigations into criminal, atrocity, intelligence and homeland security matters, as well as in civil litigation and mass disaster victim identification. Forensic scientists use cutting edge scientific technology and expertise to discover, expose, and explain physical evidence.

NIST and DOJ recently signed a Memorandum of Understanding (MOU) with the intent of supporting the strengthening of forensic science in the United States. The activities undertaken pursuant to the MOU are intended to strengthen the validity and reliability of forensic science by

improving coordination across a broad range of forensic science disciplines. The new initiative provides a framework for coordination across forensic science disciplines under Federal leadership, with state and local participation. The MOU provides for the establishment of NIST-administered Guidance Groups intended to develop and propose discipline-specific practice guidance that will become publicly available and may be considered (along with other relevant and publicly-available materials) by Federal agencies and forensic science-related groups. This coordinated effort is designed to standardize national guidance for forensic science practitioners at all levels of government. Additionally, NIST will continue to develop methods for forensic science measurements and will validate select existing forensic science standards.

Pursuant to the MOU, NIST will administer and coordinate all necessary support for the established Guidance Groups. As with the forensic Scientific Working Groups, Guidance Groups will have no authority to make decisions on behalf of, or provide advice directly to, the Federal Government, any Federal agency or officer, or any other entity. Guidance Groups may collaborate with relevant voluntary standards development organizations or professional organizations for the development of consensus guidance before issuing their guidance to the public. Guidance Groups do not report to DOJ or NIST.

The goal of this Notice of Inquiry is to explore the establishment and structure of governance models for the Guidance Groups. It is expected that models of interest would include the following attributes: transparency/openness, balance of interest of stakeholders, due process for stakeholder input, consensus process for decision making, and an appeals process. These fundamental principles are critical to developing a model that ensures that stakeholder input is

actively solicited and valued. NIST may explore additional governance models in the future. Comments submitted in response to this Notice will serve as input for NIST's consideration in developing the processes and structure necessary for the establishment and maintenance of successful Guidance Groups.

The Guidance Groups will be voluntary collaborative organizations of forensic science practitioners and other stakeholders from a wide array of professional disciplines who represent all levels of the government, academia, non-profit sector and industry. The Guidance Groups are intended to provide structured forums for the exchange of ideas among operational, technical, research, and support organizations to improve the nation's use of forensic science and promote best practices and standards among local, state, Federal, and private forensic science service providers. The proposed mission of the Guidance Groups is to support the development and propagation of forensic science consensus documentary standards, monitor research and measurement standards gaps in each forensic discipline, and verify that a sufficient scientific basis exists for each discipline.

Request for Comment: This Notice of Inquiry seeks comment on the possible models for the administration, structure and support of the Guidance Groups. Responses can include information detailing the effective and ineffective aspects of prospective models, as well as the current forensic Scientific Working Groups (SWGs). The questions below are intended to assist in framing the issues and should not be construed as a limitation on comments that parties may submit. NIST invites comment on the full range of issues that may be raised by this Notice. Comments that contain references to studies, research and other empirical data that are not

widely published should be accompanied by copies of the referenced materials with the submitted comments, keeping in mind that all submissions will be part of the public record.

1. Structure of the Guidance Groups

- Given the scope and principles of the Guidance Groups outlined here, what are structural models that could best support the Guidance Groups, taking into account the technical, policy, legal, and operational aspects of forensic science?
- What elements or models would facilitate the sharing of best practices and uniform practices across the Guidance Groups?
- Are there public policies or private sector initiatives in other countries that have successfully strengthened the nation's use of forensic science by supporting the development and propagation of forensic science consensus documentary standards, identifying needs of forensic science research and measurement standards, and verifying the scientific basis exists for each discipline? If so, what are they?
- What are the elements which make existing forensic Scientific Working Groups (SWGs) successful? Are there examples of best practices in specific SWGs that ought to be replicated in Guidance Groups? If so, what are they?
- Would partnership with a standards development organization (SDO) in which the standard is issued by the SDO present any obstacle for participation by a broad range of forensic science stakeholders in the development of a standard? If so, why?
- Would partnership with an SDO in which the standard is issued by the SDO present any obstacle to broad adoption of a standard? If so, why?

- Would a fee-based membership model run through a not-for-profit organization (similar to the National Conference of Weights and Measures) present a significant obstacle for participation?
- If the Guidance Groups followed a fee-based membership model, are there appropriately-tiered systems for fees that would prevent “pricing out” organizations, including individuals?
- Other than a privatized model, are there other means to maintain a governance or coordinating body in the long term? If possible, please give examples of existing structures and their positive and negative attributes.

2. Impact of Guidance Groups

In its role in administering and supporting the Guidance Groups, NIST’s aim is to improve discipline practices by advancing forensic science standards and techniques through a collaborative consensus building process with Federal, state and local community partners.

NIST thus seeks comments about the ways in which the structure, function and operation would best support the Guidance Groups by being a catalyst for such improvements.

- Given that the Guidance Groups cannot mandate the adoption of standards, what can they do to best leverage their position and encourage adoption? To what extent does membership and transparency impact possible adoption of guidance at the state and local level?
- Are there best practices or models to consider with regard to a structure that would encourage effective communication with the scientific community to explore research gaps and aid in recognizing research priorities?

- How should NIST researchers engage with the Guidance Groups in support of the goal to strengthen the nation's use of forensic science by supporting the development and propagation of forensic science consensus documentary standards, identifying needs of forensic science research and measurement standards, and verifying the scientific basis exists for each discipline?

3. Representation in the Guidance Groups: Given the diverse, multi-sector set of stakeholders in forensic science, representation in Guidance Groups must be carefully balanced and inclusive.

- Who are the stakeholders who should be represented on the Guidance Groups? What steps can NIST take to ensure appropriately broad representation within the Guidance Groups? What does balanced representation mean and how can it be achieved?
- What is the best way to engage organizations playing a role in forensic science, standards development and practice?
- How should interested parties who may not be direct participants in Guidance Groups, engage in a meaningful way to have an impact on issues in front of the Guidance Groups?
- To what extent and in what ways must the Federal government, as well as state, local, tribal and territorial governments be involved at the outset?

4. Scope of the Guidance Groups

- Should all of the current forensic Scientific Working Groups (SWGs) transition to Guidance Groups?

- Are there broader groupings of forensic science disciplines that could form the basis of Guidance Groups than the current group of twenty-one SWGs? If so, what are those groupings?
- Is there a need for a cross-disciplinary functional approach (i.e. statistical analysis) and how could the Guidance Groups be structured to best address that need?
- To what extent do Guidance Groups need to support different forensic science disciplines differently from one another?

Dated: September 24, 2013.

Willie E. May
Associate Director for Laboratory Programs

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